CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

August 9, 2002

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:34 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, and Gordana Swanson were present.

Item #1. Approval of the Minutes of the July 11, 2002, Commission Meeting.

Commisioner Swanson moved that the minutes be approved.

Commissioner Knox seconded the motion.

There being no objection the minutes were approved.

Item #2. Public Comment

There was no public comment.

Item #4. Proposition 34 Regulations: Adoption of Emergency Regulation 18535 -- Restrictions on Contributions Between State Candidates.

Senior Commission Counsel Hyla Wagner explained that this proposed regulation deals with the interpretation of Government Code section 85305. That provision of Proposition 34 restricts contributions made from one state candidate to another.

Ms. Wagner stated that legislative leaders have typically raised large amounts of contributions that are used to help candidates of their party in important races. Section 85305 places limits on the abilities of officeholders to fund other races. She read the one-sentence provision, explaining that it is very straightforward, restricting the candidate making the contribution, and not the recipient of the contribution.

Ms. Wagner explained that the actual amount of the limit on those contributions and how the limit was to be applied were two areas of controversy. The language of § 85305 refers to § 85301(a) for the amount of the limit on contributions between state candidates. Based on the plain language of the statute, staff interprets the limit on the amount of contributions between candidates to be $3,000. That interpretation has been set forth in the two advice letters attached to the staff memorandum and in the proposed regulation.

Ms. Wagner stated that the proposed regulation 18535(a) and (b) clarifies that the $3,000 limit is applied across-the-board to all state offices. She noted that Tony Miller's letter takes the position

that the § 85305 limit is $3,000, $5,000, or $20,000, depending on the type of office. Ms. Wagner stated that the three separate limits might apply if § 85305 referred to the limits set forth in § 85301(a), (b) and (c), or if § 85305 were not in the PRA. However, § 85305 specifically refers to the contribution limits of § 85301(a), which specifies the amount of $3,000. She stated that Mr. Miller's interpretation would read § 85305 out of the statute and would contradict the principle that a statute must be construed so as to give meaning and effect to each provision.

Ms. Wagner stated that proposed regulation 18535(c) underscores that the restriction on contributions between state candidates applies to the aggregate total of contributions made by the candidate and the candidate's committees.

Ms. Wagner stated that proposed regulation 18535(d) and (e) address the old committee and effective date issues. Subparagraph (d) makes clear that the $3,000 limit applies to contributions made by a candidate and all of the candidate's controlled committees, including a pre-2001 committee. She noted that Section 83 of the Act delays the effective date of the contribution limits for statewide candidates until November 6, 2002. Subparagraph (e) sets forth that delayed effective date. The limit on contributions by candidates to other candidates applies beginning January 1, 2001 for legislative candidates, and will apply November 6, 2002 for statewide candidates.

Ms. Wagner stated that it was Mr. Miller's position that a legislative candidate can currently make a contribution to a statewide candidate in excess of $3,000 from an old committee. He argued that the outstanding debt rules of § 85316 and regulation 18531.6 would apply, and that there is, therefore, no transfer limit on contributions made from that legislative candidate's old committee. Staff believed that § 85305 is right on point, and that an indirect analysis through the old debt regulation was not necessary.

Ms. Wagner stated that, under the proposed regulation, a legislative candidate would be limited to contributing $3,000 to another candidate. That limit would apply to all of the candidate's committees, including a pre-2001 committee. She noted that Mr. Miller proposed alternate language for the regulation, which was included with his letter. She compared the two proposals, concluding that staff's version most closely fits the plain meaning of the statute and provides a simpler rule.

In response to a question, Ms. Wagner stated that Mr. Miller's equal protection argument was addressed by Judge Damrell in the *Institute for Governmental Advocates* (IGA) case. In that case, a lobbying group claimed that the prohibition on contributions from lobbyists in § 85702 denied lobbyists equal protection. Judge Damrell dispensed with that claim, explaining that a statute can draw classifications that are rationally related to a legitimate state interest. A member of a suspect classification, such as race or gender, would be allowed the strict scrutiny test under equal protection analysis. However, if the issue does not involve a member of a suspect class, then the standard provides that the classification drawn by the statute has to be rationally related to a legitimate state interest. Legislators are not members of a suspect class. She did not believe that legislators were being denied equal protection, and noted that the legislators voted the statute onto the ballot in the first place.

Commissioner Downey stated that § 85305 includes use of the word "limits" and not "limit" as pointed out by Mr. Miller's letter. The drafters singled out subdivision (a), but seemed to be talking about more than one limit.

Ms. Wagner responded that there is just one monetary limit in subparagraph (a), though it does refer to the limits on what a candidate may not accept and what a person may not make. Those might be the "limits" referred to. Otherwise, she thought use of the word "limits" was not determinative because "limit" and "limits" are often used interchangeably.

Commissioner Knox pointed out that, consistent with staff's interpretation, the $3,000 limits apply to a number of different offices. The plural usage of the word "limits" could be referring to the number of different offices to which the limit applies.

Commissioner Downey stated that he was concerned about the use of the word "limits," and with the legislative history of the statute. He noted that the people who wrote Proposition 34 may have been thinking about the three different dollar limit amounts with regard to the intra-candidate transfers. He stated that the statute, however, does not read that way. Section 85305 was very clear, and that part of the statute must be used. He noted that Mr. Miller tried to explain why § 85305 was included in the statute for practical or political purposes, but it seems that § 85305 only refers to one limit and that limit must be given some meaning.

Tony Miller, on behalf of Jan Wasson, and in his own right as someone who has been interested in the implementation of the PRA for many years, thanked staff and the Commission for their work implementing Proposition 34. He presented his background, highlighting his work with the PRA.

Mr. Miller opposed staff's proposed regulation. He noted that §§ 85305 and 85301(a) may seem quite clear, but when the two are merged, there is considerable ambiguity as to what § 85305 means. Section 85301(a) specifically excludes statewide candidates from its operation, therefore there is ambiguity. He believed that legislative intent must be considered. Attachments A and B to his memo, the Senate and Assembly floor analyses of the bill, make it clear that the staff's interpretation is not what was intended by the legislature. None of the ballot pamphlet materials presented staff's interpretation to the voters. The intent was not for a $3,000 limit across-the-board, but a limit determined by the recipient of the contribution. With regard to equal protection, assuming that the candidate is not in a suspect class and that the standard is low, he could not find a rational basis for distinguishing between a candidate and other contributors, limiting a candidate to contributions of $3,000, while a non-candidate could contribute up to $20,000. Given the legislative intent and the constitutional concern, he stated that the staff's interpretation was wrong. He urged the Commission to reject the staff proposal.

Mr. Miller stated that legislator-to-legislator transfers were of concern, and the language was included in § 85305 referencing § 85301(a) to make clear that the $3,000 limit applies to transfers between legislators. The overall intent was to create limits based upon the recipient of the contribution.

Commissioner Swanson questioned whether Mr. Miller sought input from the authors of the legislation to interpret their intent.

Mr. Miller responded that he did not, because a court would not entertain the thoughts of legislators and the Commission should not consider it either. Only information that was discussed and presented should be considered. The floor analysis is relevant for that purpose.

Ms. Wagner noted that initiatives present additional difficulties when trying to establish the intent of the law. She questioned the relevancy of the floor analyses in ascertaining legislative intent for a ballot measure, and suggested that the materials presented to the voters should be considered instead because the voters enacted the law. She agreed that the Senate floor analysis supported Mr. Miller's argument, but the Assembly floor analysis and the ballot materials presented to the voters did not support Mr. Miller's argument. The Assembly materials analyzed how the measure would affect Assemblymembers.

Commissioner Knox stated that the language of § 85305 is sweeping in its use of the language, "any other candidate for elective state office." That same phrase appears in § 85301(a), but then creates an exception. He asked why the drafters of the measure did not use more limited language such as, "any legislative candidate," if it was their intent to limit the reach of § 85305 as suggested by Mr. Miller.

Mr. Miller responded that hindsight is always clearer. He again referred to the Senate floor analysis, noting that it reflects his interpretation. He agreed that it could have been clearer, and noted that it was up to the Commission to resolve the ambiguity and discern the legislative intent.

Chairman Getman stated that the Commission would have to resolve the issue if the statute was ambiguous, but she did not agree that it was ambiguous. To find the ambiguity identified by Mr. Miller, one must ignore the reference to subdivision (a) of § 85301.

Mr. Miller responded that § 85305 incorporates § 85301(a) which contains the exception for statewide candidates. That language should be considered along with the backdrop of the legislative intent.

Chairman Getman stated that the legislative intent in composing the initiative cannot be considered. The courts have been very clear in directing that the information presented to the voters must be considered, and the Senate floor analysis was not presented to the voters.

Mr. Miller stated that that this was not an initiative. It was a legislative proposal amending an initiative statute. He agreed that, if it were an initiative, she would be correct.

Chairman Getman responded that it no longer belonged to the Legislature once it was put on the ballot. At that point it belonged to the people in the exact same way that Proposition 208 did. The analysis must be done the same way that the analysis was done for Proposition 208. The Commission could not consider what the drafters intended for Proposition 208, and could not consider the intent of the legislative drafters of Proposition 34.

Mr. Miller disagreed, noting that this was a hybrid. It was an amendment to an initiative proposed by the Legislature and he thought that the legislative intent of what was put on the ballot should be considered. This is done with bond measures, and is both different and relevent.

Chairman Getman stated that she did not think that the courts would allow it. She also disagreed that the statute was at all ambiguous, and believed, therefore, that the analysis was not necessary. Proposition 34 tried to limit the current system that allows legislative leadership to create huge war chests of contributions and transfer those contributions to legislators. It did not allow persons in their last terms of office to continue to raise funds and did not allow transfers to other candidates beyond $3,000. The rational reason was to stop the "king-making" that was going on.

Mr. Miller agreed. Clearly, the effort was designed to limit that activity, but the question was whether the limit was $3,000, or $3,000, $5,000 and $20,000.

Chairman Getman stated that she saw no ambiguity, and agreed with Ms. Wagner's analysis.

Commissioner Downed moved adoption of staff's proposed regulation 18535.

Commissioner Swanson seconded the motion.

There was no objection from the Commission.

At the suggestion of Chairman Getman and Ms. Wagner, a technical change was made to the language of subdivisions (c) and (e) of the proposed regulation. In addition, a comment was added to the regulation, specifically describing how the effective date, as discussed in subdivision (e), applies to legislative and statewide candidates.

Chairman Getman moved that regulation 18534 be adopted with the minor language changes and the comment described by Ms. Wagner.

Commissioner Knox seconded the motion.

Commissioners Downey, Swanson, Knox and Chairman Getman voted "aye." The motion passed unanimously.

Item #5. Proposition 34 Regulations: Adoption of Proposed Regulation 18531.7 -- Payments for Member Communications.

Chairman Getman announced that a comment letter was received the night before from the Los Angeles Ethics Commission (LAEC). She noted that the Commissioners received the letter that morning and had not had a chance to read it.

Commission Counsel Scott Tocher explained that when one drives a car, one becomes subject to the laws of the road. Similarly, expenditures trigger the contribution limits and disclosure requirements under the PRA. Deliberative acts bring people into the regulatory scheme. Both

examples have exceptions. Just as emergency vehicles are exempt from speed limit laws, § 85312 exempts disclosure requirements and possibly contribution limits from applying in a limited area. Each scheme is based on promoting the respective policies of safety or the avoidance of corruption or the appearance of corruption. The exceptions must be narrow and very carefully considered.

Mr. Tocher explained that, by excluding from the definitions of contributions and expenditures payments described in § 85312, an entity or person would be prevented from becoming a committee, thereby eliminating disclosure requirements and possibly contribution limits. The four decisions in the proposed regulation dealt with those issues. The first two decisions address defining the term, "member." The second two decisions address the participation of third parties in that process to identify whether cooperation with third parties would justify removing the exempted status.

Mr. Tocher presented Decision 1, which would define "member." The Commission was asked to consider whether to limit the term, thereby narrowing the scope of the regulation. He noted that the constitutional issues discussed in the staff memo were presented to help the Commission decide whether or how far the exemption should be extended in a commercial context. He explained that there had been confusion in previous versions of the regulation regarding whether membership in retail stores was covered under the exemption. Staff tried to make the regulation more clear and provide a strict alternative.

Mr. Tocher explained that Option 1 would include as a member anyone who pays regular membership dues or an amount predetermined for membership. As an example, a cooperative that had a membership threshold and no continuing dues would still be considered a member. Alternatively, Option 1 would include as a member someone who affirms membership with an organization annually and has participatory rights with the organization, described in subparagraphs (a)(2)(B)(i), (ii), and (iii).

Mr. Tocher explained that Option 2 was narrower, focusing on specific provisions in an organization's articles or bylaws which give a person the right to vote on directors or disposition of the organization's assets. It would also include the right to vote on changes in the bylaws or articles of the organization.

Chairman Getman noted that the Commission could decide to deal with the "committee" issue in one of two ways. First, the definition of "member" could apply to anything except a committee. Alternatively, there could be an additional group of criteria applied to a committee.

Mr. Tocher responded that subdivision (3) in Decision 2 would be an additional criteria. If it were not included, it would be whatever the decision is in the first case.

Mr. Tocher stated that the LAEC, in their letter, asked that the Commission reject the Decision 2 option in the case of committees, preferring that the committees be treated just as any other organization as determined by the Commission. They believed that a member should be defined as someone who has a substantial relationship to the organization, paying membership dues or participating in the governance of the organization. The difficulty with that, Mr. Tocher

explained, was that contributions could be in a form much like membership dues. The LAEC also pointed out that the proposed treatment of "committee" might allow candidates to avoid complying with Los Angeles' spending limits.

General Counsel Luisa Menchaca stated an additional concern that, under the PRA, defining "members" of a committee for purposes of member communications could lead to using the definition in other areas of the PRA. She suggested that staff could add additional language in Decision 2, clarifying that it would be used for purposes of § 85312 only.

Chairman Getman noted that staff recommended Option 2.

Commissioner Downey stated that he leaned toward Option 1 because it fit the statutory language better and carried fewer constitutional concerns. It included more economic organizations.

Commissioner Knox stated that he was concerned about subparagraph (a) of Option 1, because it could create an exception for retail store memberships. He did not believe that the statute intended to include memberships to stores that were more like customers.

Chairman Getman agreed, and noted that Option 2 remedied that problem. She questioned whether it might also eliminate any groups that the statute intended to include.

Mr. Tocher responded that he did not know how all nonprofits are organized and could not be sure that all of them would be included in the exception. There had been no public comment expressing that certain nonprofits would not be included in the exception.

Chairman Getman suggested that the Commission accept Option 2 because it eliminates the retail store memberships, and noted that if it does not work the public will let the FPPC know.

Commissioner Knox pointed out that there are a lot of charities that are run by a board of directors that simply reelects itself. Contributors to the nonprofit may have no involvement in the decision-making of the organization. That charity may not be able to take full advantage of the exception, and could only send exempted communications to the board members and not to the contributors.

Commissioner Swanson suggested that the contributors would not be involved in the political matter anyway.

Chairman Getman disagreed, noting that some charities can spend up to 10% of their budget on legislative matters.

Commissioner Knox stated that the Red Cross took positions on legislation.

Chairman Getman stated that they might fall under the second part of the definition, whereby a member could also mean anyone who is designated in the articles or bylaws as a member.

Commissioner Knox responded that the designated member must also have a right to vote in order to meet the exception rule.

In response to a question, Mr. Tocher stated that he searched for definitions of "members" in the California statutes and found no definitions specific to nonprofits.

Commissioner Knox suggested that Option 2 might be the best the Commission could do, noting that the Commission could not preserve the ability of every charity to send out a broad mass mailing to members.

Mr. Tocher clarified that mailings would not be prohibited, but would have to be reported.

Chairman Getman suggested that the Commission accept Option 2 and encourage the public to let the Commission know if the exception did not reach those organizations the statute intended to reach.

Commissioner Knox agreed. He did not believe that it would be too much of a hardship for a non-profit to be required to report a mass mailing to all of its donors.

Chairman Getman noted that if it is done twice, then the donors could become contributors to a political committee subject to disclosure reporting.

There was no objection from the Commission to accepting Option 2.

Chairman Getman noted that LAEC was concerned that a candidate controlled committee could have members and send membership communications, thus avoiding the contribution and expenditure limits of their local ordinance.

Mr. Tocher agreed. He added that there was also a concern that, if the $100 or more bracketed language of Decision 2, lines 12 and 13 is included in the regulation, the Commission may inadvertently exclude small contributor committees from consideration. Since small contributor committees are generally favored in the PRA, the Commission may wish to add a specific sentence at the end identifying small contributor committees.

Chairman Getman responded that the statute under consideration addresses membership organizations. The first sentence of the language in Decision 2 would make every committee a membership organization, even if it is not. She did not think that was advisable. She questioned whether a sponsored committee, using its PAC to send out membership communications to the members of the nonprofits who are sponsors, could do so within the scope of the exception. The same question arises with regard to labor unions that want to send communications to the union members through its PAC.

Mr. Tocher responded that, without subdivision (3), the scenario presented by the Chairman would not fall under the exception of § 85312, unless the PAC was set up as a membership group, pursuant to subdivision (a)(2). He noted that the Commission decided to include committees under its definition of "organization," and now needed to identify who, in these

specific circumstances, the member is. If it is just the board of the PAC, it may be pointless to include a committee under the definition of "organization."

Chairman Getman noted that small political clubs are sometimes membership organizations as well as being PACs. Those should not be excluded from the benefit of the membership communication because they are a PAC, even though they meet the definition of membership.

Commissioner Knox pointed out that the Lincoln Club members elect their leadership, and are, therefore, a membership organization. He noted that the first sentence of Decision 2 would make a mere donor a member of a committee. He believed that would be inconsistent with the tentative decision the Commission made with respect to Decision 1. Additionally, it would allow donors to a political committee to be members, thereby allowing the political committee to utilize the exception, while the Red Cross or United Way would be barred from using a parallel analysis. He did not support that interpretation.

Commissioner Downey questioned whether the real problem was with the Commission's earlier decision to bring committees under the definition of "organization."

Chairman Getman responded that it was not a problem if the Commission includes just the second sentence of Decision 2 concerning sponsored committees. That would include true membership organizations. She suggested that the last sentence of subparagraph (3) be moved to be the last sentence of subparagraph (2). This would eliminate the traditional recipient committees.

Commissioner Knox questioned why there should be an exception for the sponsored committee. If the Commission was looking at the control of an organization as an indicia of membership, then he questioned whether the last sentence of Decision 2 would meet that criteria. As an example, he asked whether a member of the AFL-CIO who donates to the PAC has some direct or indirect control over the PAC.

Chairman Getman responded that the control would not be the issue. She stated that the difference would be in whether the member of the AFL-CIO could get a membership communication exemption only if it is paid for from other than PAC funds. If organizations such as the AFL-CIO are allowed to use PAC money to make the membership communication, the second sentence would be necessary. If the Commission wanted to be strict about the statute, it could be confined purely to membership organizations using their non-PAC money or organizations set up as a PAC. Section (3) would be eliminated to accomplish that. If a union or non-profit sets up a PAC, they could not use PAC money to make the membership communication subject to the exception, unless the PAC was set up as a separate membership group.

Commissioner Knox noted that the approach offered the advantage of consistency. It would also be simple to understand.

Technical Assistance Division Chief Carla Wardlow noted that there are committees or organizations that are defined as multi-purpose organizations. They do not set up a separate

PAC, but, because they do engage in political activities they must report that portion of their money that is used for political activities as a committee. Even though they do not have a separate PAC account, they do have a separate committee on paper. She asked how payments from a general fund for a member communication should be treated, questioning whether it should be included in their PAC reporting, or should it be considered a membership communication from their general fund.

Commissioner Knox responded that it should be the latter.

Mr. Tocher agreed.

Chairman Getman stated that the consensus was to eliminate the language of subparagraph (3) of Decision 2.

Mr. Tocher noted that the decision would not make an accommodation for the small contributor committee situations.

Chairman Getman agreed. She clarified that membership organizations cannot use PAC money to make membership communications and achieve the exceptions of the statute. If PAC money is used, it would be an ordinary expenditure.

Mr. Tocher stated that subdivision (4), (5) and (6) are, for the most part, unchanged. The definition of "shareholder" and "family" were modified to reflect the concerns of the Commission and some public input. The prior definition of "shareholder" was amended.

Commissioner Knox stated that subdivision (5) was fine, but registered his objection to family code § 297 as part of the definition of "family," because § 297 has a specific purpose to allow domestic partners a "family" status for some purposes. He did not believe that it should be imported into this context.

Mr. Tocher stated that the essence of the regulation interprets "family" using terms that focus on the household so that communications to the family members means those persons at the house. This would help avoid inadvertent violations.

Commissioner Knox noted that the statute reads, "families of members," and he believed that it was meant to include a member of the family who does not live in the household. The term "household" is not used in § 85312. "Families" requires some blood or marriage relationship, and he favored giving it that interpretation.

Ms. Menchaca pointed out that, as the law evolves, the term "spouse" may become applicable to domestic partners, which could result in the inclusion of domestic partners.

Commissioner Downey commented that importing specific sections tends to import future changes. He asked for a reading of § 297.

Mr. Tocher read § 297. He explained that importing the section would refer to all of family Code § 297, including the registration requirements. He detailed those requirements.

Commissioner Swanson stated that she did not have a problem with including § 297 as drafted by staff.

Commissioner Knox stated that it is not up to the Commission to expand the scope of § 297 by regulation.

Chairman Getman responded that, if this was about the gift limit to a spouse, whereby people have not yet concluded that a spouse includes a domestic partner, she would agree. However, in this case, by including "family" instead of "spouses and children" in the statute, the Commission has the leeway to acknowledge that families do now include registered domestic partners. She agreed that the domestic partner could be included in the provision. She noted that the Commission may want to make sure that the language specifies that the regulation defines terms for purposes of membership communications only, and not for any other purposes of the Act.

Ms. Menchaca noted that "spouse" is used in other areas of the Act, and use of the "family" provision will be unique to this section.

Mr. Miller stated that the elections code was amended last year to include a domestic partner as one who can return a voted absentee ballot. The Legislature is expanding into the elections area the concept of domestic partner as referenced in the proposed regulation.

Commissioner Downey agreed with Commissioner Swanson and the technical concerns of Chairman Getman. He suggested that the language be left as proposed by staff.

Mr. Tocher stated that subdivision (b) includes language that has been shifted from a different area in a previous draft and contains no new provisions. Subdivision (c) language is unchanged in terms of the calculation of payments.

Mr. Tocher explained that Decisions 3 and 4 addressed third party participation. He noted that the LAEC urged the Commission to not allow or construe participation by third parties as coming within the ambit of § 85312. Subdivision (d) concerns third parties other than candidates.

Mr. Tocher distributed alternate language, suggested by Commissioner Knox. Mr. Tocher agreed it would be a clearer way of stating the same thing.

Chairman Getman agreed that third party payments or earmarked payments should not count, but was concerned about payments that come from a member of the organization for a specific communication. She did not believe that would be a problem.

Mr. Tocher responded that it could be addressed in the interpretation of "third party." If the contribution came from a member, then it could be accommodated by identifying that person as a member and not a third party.

Chairman Getman suggested additional language that would read, "unless the person providing the additional or earmarked funds already is a member of the organization." This would allow the member to contribute the funds and the organization could still be covered by the exception.

Commissioner Knox suggested that the additional language, "other than a person defined in this subsection" be added after the words "third party" in subsection (d).

In response to a question, Ms. Menchaca argued that the right to send the member communication belonged only to the organization, and not to shareholders or employees, in order to be covered by the exemption. She believed that the third party language should be left in the regulation, and that it be dealt with on a case-by-case interpretation. If a member gives funds to its organization for ordinary purposes, it is different than if they give money for purposes of circumventing contribution limits.

Chairman Getman pointed out that the organization may feel very strongly about a ballot measure, and may not have the funding for the special mailing to members. The organization may then ask its membership for special donations for the mailing.

Commissioner Knox stated that the statute does not limit the exception to communication by the organization. It refers to "payments for communications to…". It defines the exception in terms of who receives the communications.

Chairman Getman noted that the Commission had to decide whether the payments should be "by" or "to."

Ms. Menchaca noted that staff urged the Commission to reject the bracketed language.

Mr. Tocher noted that the statute refers to payments for communications "to" members, employees and shareholders. There was concern that, by not including (d), the regulation would be left with an avenue for skirting the contribution limits.

Chairman Getman saw nothing wrong with allowing a member of an organization to send funds to the organization that are earmarked for the communication. This would accommodate the reality of how membership communications are often funded.

Commissioner Downey questioned whether the proponent of a ballot measure could then join the organization in order to send the member communication. He noted that the Commission should want to avoid that scenario.

Chairman Getman responded that there is always a way to manipulate the system.

Executive Director Mark Krausse stated that staff has asked for a clarifying amendment in SB 34 with regard to whether it is just the organization that can make the payment, and the drafter responded that it should be clarified by regulation. The drafter believed that their intent was clear in the statute.

Commissioner Knox stated that a member should be able to contribute towards a membership communication and still be able to enjoy the exception. He noted that the organization would have to provide its mailing list to the member, which could serve as a check since not all organizations are willing to give up their mailing lists.

Commissioner Downey stated that one of the issues is in who gets the advantage of the exemption. Staff believed that it should be the organization, and he agreed. He supported the current version of subdivision (d). If a third party happens to be a member, then the third party does not enjoy the exemption.

Chairman Getman agreed that the organization should get the exemption, but also believed that it ignores reality if a member is not allowed to give additional funds to pay for the communication. It would not have to be reported by either the organization or the contributor.

Mr. Tocher pointed out that the communication will be paid for by funds provided by the members. One member may contribute more than others. Ultimately, it may be primarily funded by a small group of individuals.

Chairman Getman noted that the non-profit may specifically request funding from members for a communication when they feel that the issue is important. Under the proposed subdivision (d), that communication would not fit within the exemption because it was earmarked.

Mr. Tocher suggested that the scenario presented by Chairman probably will happen.

Commissioner Downey stated that the expense of that mailing is not an issue. The issue arises when the money comes in, and is earmarked.

Chairman Getman agreed, noting that if it is used to contribute to a candidate or ballot measure, the regulation would not apply. If it is used to analyze the measure and send the membership the analysis and to urge the membership to fight the measure, the contribution would not be reportable.

Commissioner Downey agreed that those monies used for the communication should be exempt.

Mr. Tocher agreed, and pointed out that he had not envisioned payments by a third party to encompass a member. If the member was explicitly solicited, it would still be an exempted contribution because that member would not be a third party. A third party would be a nonmember of the organization. This would open up issues involving the timing of the contribution, the size of the contribution and whether it is the result of a specific request etc. Presumably, he noted, many membership organizations will be organized for that purpose. His analysis assumed that the third party was not a member.

Ms. Menchaca pointed out that the "third party" language may need to be utilized on a case-by-case basis. This would not give a lot of clarity to the public and local jurisdictions. She suggested that the "third party" language be changed to "nonmember" to make it clearer.

Commissioner Downey suggested that another subdivision might then be needed to clarify who is a member.

Mr. Tocher suggested, alternatively, that the revised language suggested by Commissioner Knox be changed, deleting "by a third party," and substituting "by a nonmember." He further suggested adding "by a nonmember" after the word "organization" in the last line of the proposal.

Chairman Getman stated that if it is earmarked for the communication, it would be paying for the communication.

Commissioner Swanson observed that the change would mean that members could give earmarked monies and those monies would be exempt from reporting.

Mr. Tocher agreed, noting that it would be treated like other membership communications. He explained that it is a clarifying change of the definition of "third party." It would not be a change in the statute, but would simply clarify that "third parties" means nonmembers. Members of the organizations would still benefit from the provisions of the statute.

Commissioner Knox questioned whether the regulation would be expanded to include earmarked payments from shareholders to shareholders or employees to employees.

Chairman Getman noted that it brings up the question of whether the payments should include those payments made by or to an organization.

Mr. Tocher stated that the basis for the distinction is that, in the case of employees, it would involve a commercial entity. An employee wanting to communicate with other employees is not necessarily critical to the function of the organization and may not be intended to benefit from the exemption provided in the statute. An earmarked payment by a member involves accommodating a group's ability to communicate with its members.

Chairman Getman noted that the language could be changed from the suggested "nonmember" language to "anyone other than the organization or its members, employees or shareholders."

Commissioner Knox questioned whether the suggestion addresses whether the communication is, in each instance, coming through the organization or looking at the source of the payment to determine whether it is entitled to the exemption.

Mr. Tocher responded that both were being explored.

Commissioner Knox stated that he did not support allowing an employee of a retail establishment, without reference to an organization and the organization's needs, to send out an exempt communication with his or her own signature and claim the benefit of the exemption. The communication should come from the organization. If the retail store wanted to send out the

communication and the employee wanted to help fund the communication, it could be handled differently.

Chairman Getman observed that Commissioner Knox's scenario would involve payments made by an organization for communications. There seems to be a consensus that it should be restricted to those types of communications.

Commissioner Knox agreed. He noted that the payment would be earmarked in order to reap the benefit of the exception. He suggested that an employee or shareholder should have the same right as a member.

Chairman Getman agreed.

Ms. Menchaca stated that if the Commission rejected the "or to" language in the proposed subdivision (a), the factual argument could be made that the employee or the other person was using the organization as a conduit or intermediary, and that the communication was not made by the organization. If the "nonmember" or "third party" language is included in subdivision (d), staff can utilize subdivision (a) to look at the essence of whether the communication truly was from the organization.

Chairman Getman clarified her suggestion that the language of subdivision (d) read, "Notwithstanding any provision of Government Code section 85312 or this regulation, a payment for a communication to members, employees, shareholders or families of members, employees or shareholders of an organization, for the purpose of supporting or opposing a candidate or ballot measure, shall be regarded as a contribution or expenditure if it is paid for by anyone other than the organization or its members, employees or shareholders."

In response to a question, Chairman Getman stated that if a third party gave a check for $10,000 to an organization, earmarked for a specific communication, the third party would have paid for the communication.

Commissioner Downey noted that the payments for the communication in that scenario would be made by the organization from funds earmarked by the third party.

In response to a question, Enforcement Chief Steve Russo stated that it would not necessarily be standard to consider the payment from the third party, with the organization serving as intermediary. He suggested that the earmarking language would be necessary.

Commissioner Downey pointed out that adding the earmarking language would be, at worst, superfluous.

Mr. Tocher noted that allowing the earmarking could be a problem. They do not want to allow earmarking from nonmembers or nonemployees.

Chairman Getman stated that the language could read, "or paid for by funds received by the organization from anyone other than its members, employees or shareholders that are earmarked for the communication."

Mr. Tocher agreed.

Chairman Getman stated that the Commission had a consensus on the concept that the organization must pay for the communication. The organization can receive funds from its members, employees or shareholders for the communication but not from anyone else.

Commissioners Downey, Knox and Swanson agreed.

Chairman Getman asked Mr. Tocher to work on that language.

Mr. Tocher presented Decision 4, which concerned whether a candidate should be allowed to ask the organization to make the communication to its members.

Chairman Getman argued that if the communication is made at the behest of a candidate, it should be a contribution to the candidate. That would prevent the kind of gaming that Commissioner Downey was concerned about.

Mr. Tocher stated that the LAEC would agree. It could be implemented under Option A.

There was no objection from the Commission.

The Commission adjourned to closed session at 11:20 a.m.

The public session reconvened at 1:02 p.m.

Chairman Getman announced that Commissioner Knox would not be present for the rest of the meeting.

Mr. Tocher distributed a copy of the revised language to the Commission. He detailed the following changes:

1. Subdivision (a), line 5: "**{Decision 3} [**or to**]**" was eliminated pursuant to the decision made for subdivision (d).

2. Subdivision (a): Line 15: "political party" was deleted. Line 12: "other than a political party" was added. The changes were made pursuant to a suggestion by Tom Hiltachk to clarify that it refers to an organization other than a political party as opposed to an organization excluding a political party

3. Subdivision (a)(2) changed to implement the Commission's definition of "member."

4. The ensuing subdivisions have been renumbered as a result of the Commission's decision to reject the proposed substance of decision 2.

5. Subdivision (d) has been reworded to implement the direction of the Commission. In response to a question, Mr. Russo stated that the new language was clear enough for enforcement purposes.

6. Subdivision (e) incorporates the preliminary determination that payments made at the behest of a candidate or committee will be deemed a contribution to the candidate or committee at whose behest the communication was made. This utilized Option A of Decision 4.

Diane Fishburn, from Olson, Hagel and Fishburn, on behalf of a number of labor organizations, commented that the purpose of subdivision (f) was to require the reporting of payments for membership communications when the organization making the payment is a committee. She was concerned that if a communication was paid for by the sponsored committee of an organization, it was no longer a member communication under § 85312 and therefore reportable as a contribution or independent expenditure.

Ms. Menchaca agreed that the contribution was reportable. She explained that the Commission changed the term "expenditure" to "payment" on page 3, line 11, to reflect that it was meant to require the reporting of it. It uses itemization as described in Government Code section 84211. Staff would not be treating them as expenditures.

Chairman Getman stated that she thought that the Commission had decided that a PAC of an organization, even if it is a sponsored PAC, could not pay for a membership communication to the organization and have it fall within the exception.

Commissioner Downey agreed. He stated that if the PAC spent the money the exemption would not apply.

Chairman Getman explained that if the PAC itself was a membership organization the exemption would apply.

Ms. Fishburn noted that a PAC may be an account of a membership organization, which is the case for most unions. The PAC is governed by the same bylaws and governing structure as the rest of the organization. A PAC is set up as a separate segregated fund under tax and campaign law. The members vote for the same people who govern both the PAC and the organization.

Chairman Getman observed that the PAC could qualify as a membership organization.

Ms. Fishburn questioned whether the PAC would qualify as part of its sponsoring organization. There could be a union PAC with a provision in the union bylaws allowing the board of directors to establish a PAC. Part of the members' dues are put in the PAC for political purposes. Sometimes the board will appoint a committee to run the PAC. Sometimes the board itself will

run the PAC. The PAC is not a separate entity from the organization. It would basically be another bank account, as far as the union is concerned.

Ms. Menchaca stated that if the money came from the PAC, it will be reported like an expenditure. The way that the regulation is structured, it would not count towards expenditure limits if that is applicable.

Chairman Getman stated that it would not count because the PAC would itself meet the criteria of a membership organization.

Ms. Menchaca agreed.

In response to a question, Ms. Fishburn stated that the members of a union establish the PAC through their bylaws and their board. It is their money that funds the PAC. She believes that they are members of the PAC. There is nothing that separately and expressly states that the members of the union are the members of the PAC.

Chairman Getman explained that, under the earlier ruling of the Commission, if a PAC pays for communications to the members of the sponsoring organization, the exception of § 85312 would not apply unless the PAC itself has members and meets the criteria for a membership organization.

Ms. Menchaca stated that any group that is comprised of 25 or fewer individuals will not be subject to these rules.

Chairman Getman stated that a committee can make a membership organization payment if the committee qualifies as a membership organization and has members. It would still have to report the payment.

Ms. Menchaca agreed, noting that it was consistent with certain subsections of § 84211.

Ms. Fishburn pointed out that there is a definition of "member" in regulation 18419, dealing with sponsored committees. It specifically defines "member" to include a member, employee, officer, shareholder or any other person affiliated with the sponsor or other intermediate unit. The distinction between being a member of the union and being a member of the PAC has not been focused on before in regulation or advice letter.

Chairman Getman agreed. She noted that the Commission here is defining "member" solely for the purpose of the member communication statute.

Ms. Menchaca stated that the discussion revisited decision 2.

Chairman Getman repeated for clarity that under Decision 2, the Commission decided that a PAC cannot pay for a membership communication to the members of the sponsoring organization and get the benefit of the § 85312 exception unless the PAC itself is structured as a membership organization. If a committee structures itself as a membership organization then it

can send member communications. However, if it is a committee, the communications will have to be reported as payments under the committee reporting requirements.

Ms. Fishburn stated that she believed that she could advise her labor union clients that their members are members of their union PACs.

Ms. Fishburn stated that proposed subdivision (e) was a concern because it provides that payments for member communications can be a contribution if they are made at the behest of a candidate. She believed that contradicted the statutory language which says that member communications are not contributions or independent expenditures.

Chairman Getman responded that the Commission decided that they were not a member communication but were a contribution if they are paid for by a third party. Many things are not member communications.

Ms. Fishburn responded that the "at the behest" language comes from the definition of "contribution" and the statute says that they are not contributions. Therefore, the Commission is bringing part of the definition of "contribution" back in.

Mr. Tocher clarified that Ms. Fishburn believed that the Commission was wrong to refer to conduct that is also used in defining what a contribution is. In her view, when a candidate asks a committee to make a payment for a communication to its members, it should not be considered a contribution. He stated that if that were true, any payment by any third party to a group of people who are members, employees, shareholders or family members of those persons who are members of an organization and have been randomly thrown together would be covered by the statute. He believed that including the word "behest," which is also used under the definition of "contribution," would be appropriate because both can address the same conduct. As an example, he stated that someone could send a mailing to everyone in the room. Everyone in the room is an employee, shareholder, or family member of some entity or group. Therefore, under Ms. Fishburn's reading, that communication would not be a contribution even though it obviously contradicts the spirit of the statute. He believed that it is therefore fair to read into the statute that it does not reach communications that are behested.

In response to a question, Ms. Fishburn stated that the organizations who are communicating with their members have a First Amendment associational right to do so. The fact that they may have conducted certain activities that come within the Commission's broad definition of "at the behest" should not require them to abdicate those rights.

Chairman Getman questioned why a candidate should be allowed to get around the contribution limits by going to membership organizations and encouraging them to send membership communications instead of contributions.

Ms. Fishburn pointed out that the organization would still have to decide if they wanted to do that, noting that the candidate does not have control over it.

Chairman Getman stated that Proposition 34 says that there is a narrow exception to the very strict contribution limits. One of those exceptions considers the fact that a membership organization has the right to communicate with its own members. It does not say that the membership organization has that same right when that communication is done at the behest of an outside party who is subject to contribution limits. Otherwise the contribution limits mean very little.

Kathy Donovan, from Pillsbury Winthrop, stated that the federal law provides that a corporation or union, or their PACs, can communicate to their members at the behest of a candidate and there is no limit. It is not considered a contribution. Some reporting is required for the PAC. Federal law has lower limits and a broader prohibition, yet allows the freedom to communicate with members.

Commissioner Downey noted that candidates typically approach interests groups requesting their support. He questioned whether, if the organization decides to support the candidate and sends out a letter, it would be considered a contribution or a member communication.

Chairman Getman responded that it would be considered a contribution to the candidate because it is at the behest of a candidate.

Commissioner Downey questioned whether the voters intended to include that scenario in the membership communication exemption.

Chairman Getman argued that the voters intended to protect the right of a membership organization to communicate internally with its membership regarding its own ideas. However, she did not believe that the voters intended to allow the candidate to use the organization as a conduit to get around the limits.

Ms. Donovan noted that the communication is sent to a limited audience.

Mr. Tocher noted that the potential for actual corruption or the appearance of corruption could exist. The candidate could both ask the organization and provide the communication itself to the organization for the mailing for reproduction and distribution. If the organization, for whatever reason, does not want to comply with the request, they are placed in an awkward position. This is an area of potential influence that the limits are supposed to protect.

Commissioner Downey noted that the statute derives from the constitutional concerns outlined in the staff memo. It bothered him to think that an organization that complies with a candidate's request to send a member communication might be treated differently than an organization which is not asked, but makes the same communication with its members on its own. The candidate may be in a situation where, if the candidate approaches the organization, he or she would then have a problem since the organization might have made the communication on its own.

Chairman Getman responded that the organization can do a lot on its own, asking the candidate information and working to support the candidate. She pointed out the scenario of a candidate

who has accepted the voluntary expenditure limits and is approaching the ceiling who asks an organization or union to send a member communication. It would be possible to reach many people and would undermine the contribution and expenditure limits. Given that, she questioned why a candidate would bother to ask for a contribution. The member communication exception would become a huge loophole.

Commissioner Downey noted that it is a limited audience.

Chairman Getman pointed out that the AFL-CIO, the Democratic Party and the California Teachers Association have large memberships.

Commissioner Downey pointed out that it would not be as big as putting it on television.

In response to a question, Chairman Getman stated that the "behest" language grew out of a discussion of what constituted payments for communications to members.

Scott Hallabrin, from the Assembly Ethics Committee explained that Proposition 73 imposed campaign contribution limits on candidates. Judge Karlton issued a preliminary injunction in the lawsuit that followed Proposition 73, stating that the limits of Proposition 73 did not apply to member communications. Judge Karlton did not address the definition of "contribution," but did say that it could not be limited.

Ms. Menchaca stated that a regulation is being developed by staff addressing "behest." The contact that triggers the statute seems to be part of the issue. Staff held an Interested Persons meeting on the issue on Thursday, August 8, 2002, and a proposed regulation will be presented to the Commission in September. The public would have an opportunity to review the language and request additional safe harbor language.

Chairman Getman reminded the Commission that the City of Los Angeles faced massive membership communications in the last election and there was no public reporting on those communications. The membership communications exception protects important associational rights, but that should not mean that it has to be as wide as possible. The Commission must protect the core right of a membership organization to communicate with its members, but the Commission does not have to allow an organization to become a conduit for the candidate.

Commissioner Swanson observed that it does happen and it will happen.

Commissioner Downey pointed out that the letter from the LAEC reflected that concern.

Chairman Getman stated that organizations can send member communications at the behest of the candidates, but that the payments would have to be reported and that the payments would count toward the contribution limits.

Commissioner Swanson believed that was the intent of the voters.

Chairman Getman agreed.

Chairman Getman moved that the Commission adopt the revised language that Mr. Tocher presented, including subsection (a).

Commissioner Swanson seconded the motion.

Commissioners Downey, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 3-0.

Item #3. Adoption of *In re Hanko* (O-02-88) -- Treatment of Incentive Compensation Under Section 87103(c).

Commission Counsel Holly Armstrong presented the proposed opinion approved by the Commission at its August 9, 2002 meeting.

Commissioner Downey stated that he agreed with Roger Brown that the opinion was requested by Mills Peninsula Health Services (MPHS) and not by Terilyn Hanko. He asked if the caption could be changed.

Ms. Armstrong explained that, although the request was from MPHS, it was for Terilyn Hanko. Ms. Hanko authorized MPHS to request the opinion on her behalf. The Commission had a standard practice of writing the caption in this manner under those circumstances.

Commissioner Downey had no objections to that. He noted that the opinion states that it supersedes the *Larsen* advice letter in certain respects. He asked whether it was distinguished from the *Larsen* advice letter instead of superseding the advice letter.

Ms. Armstrong responded that it is not distinguished because the advice given in the *Larsen* letter would no longer be valid under the criteria of the proposed *Hanko* opinion.

In response to a question, Ms. Armstrong stated that the opinion addresses the disqualification issue because, typically, when the Commission looks at advice and opinion requests, staff does not answer just one part of the conflict analysis unless there is a pending decision. The disqualification issue was the reason for looking at the "source of income" question, and was therefore addressed in the opinion.

Ms. Menchaca noted that the materiality regulation was at issue, which automatically makes the analysis necessary.

Chairman Getman stated that footnote 3 in the opinion was unnecessary and should be taken out.

Commissioner Downey agreed.

Chairman Getman stated that the reporting issues do not need to be resolved in the opinion, but agreed with Mr. Brown's concern that a disqualifying interest should be reportable. She suggested that it be explored further by staff.

Ms. Armstrong agreed. The issue could be considered in next year's regulation calendar or it could be addressed in an advice letter prior to the need for reporting on the next SEI.

Commissioner Downey agreed that it was an important issue, noting that it could not be resolved in the opinion.

Ms. Armstrong noted that the draft contained one typographical error which she would correct.

Chairman Getman moved adoption of the opinion with the deletion of footnote 3.

Commissioner Downey seconded the motion.

Commissioners Downey, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 3-0.

Item #6. Proposition 34 Regulations: Adoption of Proposed Regulation 18544 -Formula for Campaign Contributions and Voluntary Expenditure Limits COLA.

Ms. Menchaca explained that the base CPI figure shown in the examples of the regulation was based on the December 2000 CPI, which is a one-month actual figure. Staff's intent was to calculate the CPI on the basis of the annual average, which is a more accurate representation of what happened throughout the year. She suggested that 177.3 should be 174.8 wherever it appears.

Ms. Menchaca also suggested that "current CPI" be changed to "annual CPI" on lines 8 and 15.

Lastly, Ms. Menchaca stated that "average" should be added after the word "example" in footnote 1 to clarify that it is the average that is being utilized.

There was no objection to Ms. Menchaca's suggested changes.

Chairman Getman moved that the regulations be approved with the changes suggested by staff.

Commissioners Downey, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 3-0.

Item #7. Annual Technical Clean-up Packet: Adoption of Proposed Amendments to Regulations 18110, 18401, 18404.1, 18451, 18540, 18705.4 and 18997.

Ms. Menchaca stated that regulation 18401, page 3, lines 6 and 7 should be changed to delete "and addresses returning contributions that lack the required information." The language was not necessary and could create confusion.

Commissioner Downey moved that regulations 18110, 18401, 18404.1, 18451, 18540, 18705.4 and 18997 be adopted with the change suggested by Ms. Menchaca to regulation 18401.

Commissioner Swanson seconded the motion.

Commissioners Downey, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 3-0.

Items #9, #10, #11, #12, #13, #14.

There being no objection, the following items were approved on the consent calendar:

Item # 9. ***In the Matter of Dick Frank, Re-Elect Dick Frank County Assessor and Donna Frank*****, FPPC No. 01/404.** (4 counts.)

Item #10. Failure to Timely File Late Contribution Reports - Proactive Program.

a. **In the Matter of LA Arena Company LLC, FPPC No. 2002-15.** (4 counts.)
b. ***In the Matter of Mendocino Hotel Associates & Maureen O'Connor*****, FPPC No. 2002-443.** (3 counts.)
c. ***In the Matter of Dale Shipley*****, FPPC No. 2002-449.** (1 count.)

Item #11. Failure to Timely File Major Donor Campaign Statement – Streamlined Procedure.

a. ***In the Matter of Rich Development Company*****, FPPC No. 2002-442.** (1 count.)

Item #12. ***In the Matter of Daniel Wentland*****, FPPC Nos. 97/220 and 99/76.** (1 count.)

Item #13. ***In the Matter of George Bergner*****, FPPC No. 01 / 427.** (1 count.)

Item #14. ***In the Matter of Jane Lowenthal*****, FPPC No. 01 / 464.** (1 count.)

Item #15. Legislative Report

Executive Director Mark Krausse distributed an analysis of AB 13 as recently amended. Assemblyman Florez spoke to the Commission at its July 11, 2002 meeting regarding this bill. It had been amended to encompass a different approach. It no longer extended the definition of "lobbyist" to include what would have been salesmen trying to sell contracts to the state of California. Instead, it currently provided that registered lobbyists engaged in certain activities with regard to selling goods and services to the state would have to report activity expenses related to that work. Additionally, those lobbyists would be subject to the $10 gift limit for interactions with state officials in the course of trying to make contracts. This approach removes staff's concerns about over-breadth and increasing the number of lobbyists. Staff recommended a "support" position on the bill.

There was no objection from the Commission to approving the "support" position.

Mr. Krausse reported that he and Chairman Getman met with Senator Johnson at the Commission's direction to request that the Senator author legislation to cap the contributions allowed under pre-Proposition 34 committee authority, and to clarify whether transmittal of contributions by a lobbyist is also forbidden. Senator Johnson declined to author legislation on the second point because he believed that the ban applied only to lobbyists making contributions with their own money. Senator Johnson agreed to author legislation that would clarify that the limits would be applied whether dealing with an old committee or a new committee. Senator Johnson suggested that it be done next session, because there was so little time to amend the bill at this point.

Chairman Getman noted that they told Senator Johnson that if he was concerned about the fundraising in old committees and wanted to do something about it right now, the FPPC would supply language that they thought would take care of the problem. The Senator declined that offer at this time. He preferred to wait until the next session. Senator Johnson requested that the Commission work with him on language for that proposal starting next session, and that the FPPC work with him to try to convince fellow legislators of the need to close the fundraising gap for old committees, including accompanying him to editorial boards.

There was no objection from the Commission.

Mr. Krausse reported that they requested that Senator Johnson propose legislation addressing the cumulative contribution problem in advertising disclosure, but Senator Johnson declined to do so. Staff was currently seeking legislative support from Senator Hertzberg.

Mr. Krausse explained that staff's concerns with SB 2095 (Johnson), which included language reiterating a requirement to complete a certain field on independent expenditure disclosure reporting, have been resolved. Senator Johnson agreed to remove the problematic language, but left in the language that directs the Secretary of State to include those fields in their electronic formatting. It does no harm and seems appropriate, removing staff's concerns.

Items #16 and #17

There being no objection, the Commission took the following items under advisement:

Item #16. Executive Director's Report

Item #17. Litigation Report

Chairman Getman noted that the Commission will be asking for public comment on programs that the FPPC can eliminate to meet the proposed 20% budget cut at their September 2002 meeting. She noted that the administration was exploring program cuts as opposed to across-the-board cuts.

Item #8. ***In the Matter of Alliance To Revitalize California, a Committee for Propositions 200, 201, and 202; Virginia Boyd; and Thomas Proulx;*** **FPPC No. 99/225.**

Senior Commission Counsel Deanne Canar explained that this case arose from a Franchise Tax Board (FTB) audit, and concerns the failure of the committee to report subvendor information. That information included a listing of the various television and radio stations that the committee used during the campaign for a 1996 state ballot measure with regard to tort initiatives. FTB and FPPC staff determined that there was substantial compliance with the campaign reporting violations apart from this vendor reporting issue. To determine the appropriate penalty, staff considered several factors, including the substantial compliance with the Act, the proper reporting of the payments to the vendors as broadcast communications, and the fact that the unreported information was limited to media advertising. Staff compared that fine to other subvendor violation fines in the past few years and determined that it was consistent with other fines in those similar cases.

Chairman Getman moved approval of the stipulation.

Commissioner Downey seconded the motion.

Commissioners Downey, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 3-0.

Chairman Getman announced that the Commission addressed items #18(c) through (f), and item #19 during the lunchtime closed session. No closed session was necessary for items #18(a) and (b).

The meeting adjourned at 2:00 p.m.

Dated: September 5, 2002

Respectfully submitted,

_____

Sandra A. Johnson
Executive Secretary

Approved by:

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Chairman Getman